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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al.
Debtors.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

April 15, 2011
8:47 AM

B E F O R E:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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2 **Telephonic Hearing re Discovery Dispute.**

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A P P E A R A N C E S : (TELEPHONICALLY)

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ALSO PRESENT: (TELEPHONICALLY)

DENNIS A. PRIETO, Aurelius Capital Management

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P R O C E E D I N G S

(Audio begins mid-sentence)

THE COURT: -- on the phone, please?

MR. FISHER: Good morning, Your Honor. This is Eric Fisher from Butzel Long for the creditors' committee.

THE COURT: Okay.

MR. ZIRINSKY: Bruce Zirinsky and Kevin Finger, Your Honor, from Greenberg for the noteholders.

THE COURT: Fair enough.

All right, gentlemen, I've read your letters. I gather from the Akin Gump letter that that issue is now off the table. But I sense that unless you've resolved something since the time of Mr. Fisher's March 29th, letter, we still have four of the five remaining issues.

Mr. Fisher, I'll hear from you. You can assume familiarity with both your letter and Mr. Zirinsky's or Mr. Ticoll's letter.

MR. FISHER: Thank you, Your Honor. I appreciate that the Court does not enjoy having to get involved in discovery disputes. And we've been working hard -- I think all sides have been working hard to try to at least narrow the dispute. And so I think that as opposed to four issues to present to Your Honor, I can narrow it down and say that we have two and a half issues to present.

So to quickly jump right in, the first issue is a

1 question about the relevant time period for responsive
2 documents to be produced by the noteholders. The noteholders'
3 position is that they only need to give up documents that
4 relate to a seven-month period, from January 2009 to July 2009.
5 And the stated rationale for that is that the lockup agreement
6 was entered into in June, and they insist on restricting
7 discovery to a pretty narrow band of time just right around the
8 lockup agreement.

9 And we think that that's too narrow. And the time
10 frame that we propose is that it ought to go back to June 2008.
11 And Your Honor, although my letter says that it ought to go to
12 July 2010, based on documents that we've seen even just in the
13 past few days, we actually think that the time period ought to
14 go to the end of 2010.

15 And the reason for our time frame is as follows.
16 First I want to explain why I think it needs to go beyond July
17 2009, why the end date, that's too restrictive. There are very
18 significant events that happened after July 2009 that relate
19 directly to our objection. For example, a key event here is GM
20 Nova Scotia Finance's own filing for insolvency proceedings in
21 Nova Scotia. That didn't happen until October 2009. Part of
22 why that didn't happen until October 2009, is because they were
23 strategizing around when that filing would take place, and the
24 noteholders wanted to time that filing in order to insulate as
25 best they could from some actions in Nova Scotia, a 369 million

1 dollar consent fee that they were paying in mid-2009. So we
2 think that October 2009 is a relevant event.

3 December 2009, we've now seen e-mails between and
4 among the noteholders and the trustee that seem to suggest that
5 there's concern that the swap claim, which is an important part
6 of the claim that we're disputing, is overstated. The swap
7 claim, Your Honor, is 564 million dollars worth of claims
8 asserted in the Old GM bankruptcy case. And in December 2009,
9 there are e-mails saying that that claim may be overstated.
10 And when I say overstated, not by a trivial amount, but by an
11 amount in excess of 100 million dollars.

12 It's not until November 2009 that the actual claims
13 that we're disputing were filed in the Old GM bankruptcy case.
14 Talking about the 2010 period, for just a moment. In September
15 2010, we've seen correspondence between New GM and noteholders
16 in which there's disagreement about what the lockup agreement
17 means and the extent to which it does or does not allow claims
18 in the Old GM case. And into 2 -- right up through the end of
19 2010, there are communications between the GM Nova Scotia
20 Finance trustee and the noteholders and other bondholders about
21 filing claims in the Nova Scotia proceeding that relate to --
22 the same claims the various -- in the Old GM case.

23 So we've seen -- we've already seen documents, I
24 think, that indicate very clearly that the relevant time frame,
25 at least, you know, in terms of the end date, should extend

1 until the end of 2010. It --

2 THE COURT: Pause, please, Mr. Fisher.

3 MR. FISHER: Yes, Your Honor.

4 THE COURT: I see, based on what you argued, why it
5 should go at least through October 2009, but help me better
6 understand why it should go through either July 2, 2010 or to
7 the end of 2010. Which of the events that you described would
8 cause me to want to extend it to any of those later dates?

9 MR. FISHER: Well, in terms of an actual event, Your
10 Honor, November 2009 is when the claims were filed in this
11 case. What I described happening in 2010, the events I would
12 describe are the filing claims in the GM Nova Scotia Finance
13 proceedings that relate to the notes and the same claims that
14 are before Your Honor in the Old GM proceeding.

15 But then we've also seen already, because we have the
16 benefit of the trustee's production, extensive communications
17 in 2010 about the -- between and among the relevant parties,
18 about the calculation of the swap amount, certain claims in the
19 Nova Scotia proceedings, whether or not the swap was properly
20 terminated and if so, how to calculate the swap amount. So
21 we've already seen communications going until the end of 2010
22 that bear on how this claim ought to properly be calculated and
23 whether or not it be allowed.

24 THE COURT: All right. Continue, please.

25 MR. FISHER: In terms of why we think the time frame

1 ought to go back to June 2008, the lockup agreement that is at
2 the heart of our objection is an agreement that settled
3 litigation that had been commenced by the noteholders in
4 Canada. And they commenced the litigation in March of 2009.
5 But the litigation concerned transfers that had happened
6 between GM Nova Scotia Finance and GM Canada, as far back as
7 May 2008. And so, we'd like to -- the notes here were
8 purchased -- most of them were purchased in 2008. Some notes
9 were purchased before then. We'd like to go back to that
10 period of time in order to find out what it is that these
11 noteholders knew about those transfers at the time that they
12 purchased the notes. And we think that that's relevant.

13 In sensing whether lockup agreement was truly an
14 arm's-length and fair settlement of the Nova Scotia litigation,
15 we need to get to the bottom of the merits of that litigation.
16 And that litigation, again, concerns May 2008 transfers, and
17 the notes were purchased in 2008. So we think it's fair to go
18 back to June 2008 as a starting period of time.

19 THE COURT: All right. Continue, please.

20 MR. FISHER: Okay. That's issue number one, Your
21 Honor, the time period.

22 Issue number two is, we've sought documents concerning
23 the noteholders' decision to purchase the notes. What did they
24 know about Nova Scotia Finance at the time that they purchased
25 the notes? How did they analyze this investment? How did they

1 imagine this investment playing out? What were their
2 expectations? What did they expect to realize on this
3 investment? We think that those questions are critical to
4 determining whether they behaved equitably here. And we think
5 that at least some of the noteholders are poised to get more
6 than a hundred percent recovery.

7 And so we think the circumstances of the purchase of
8 the notes as an investment decision is just critically
9 relevant. And I appreciate that they consider that
10 commercially sensitive information. And that's why we have a
11 protective order. And we think that we're entitled to that
12 information. We're not asking for information about any notes
13 or any investment decisions other than the decision to purchase
14 the very notes that are at issue in this case.

15 THE COURT: Pause, please, Mr. Fisher. Because what
16 you just said seems to be a potential narrowing of your
17 contentions from your earlier letter. At this point you're
18 only looking for stuff on the buy side, you're no longer
19 looking for stuff on the sell side?

20 MR. FISHER: Your Honor, I think that what -- in
21 reading the noteholders' response, when it comes to calculating
22 their profits, I think that based on publicly available
23 information and 2019 statements, that they're correct, that it
24 would be possible for us to calculate profits, in other words,
25 to look at the sell side, based on that kind of information.

1 So, yes, we're focused on the buy side, Your Honor.

2 THE COURT: All right. Continue, please.

3 MR. FISHER: Issue number two, which I would just
4 describe generally as the decision to purchase these notes.
5 And then what I've described as the half issue is we'd like to
6 know what other Nova Scotia unlimited liability company
7 investments these noteholders have made, because at this point,
8 this is a niche investment strategy. This is something that
9 this group of noteholders is not just doing in this case, but
10 has done in multiple cases. And we'd like to understand how --
11 what positions they've taken in other cases that are similar to
12 this one to determine whether those positions are consistent or
13 inconsistent.

14 And we appreci -- we're not looking to open up
15 discovery and take discovery about all the documents that have
16 been exchanged in all those other proceedings. We just want --
17 we just ask for a list of those other ULC investments. We
18 would use the list to probe, you know, publicly available
19 information, to look at dockets. And then if there were
20 further information that we thought we needed, we would try to
21 ask for that in a very focused way.

22 But that's why I describe it as a half issue. Because
23 we're not even asking for the production of documents. We're
24 just asking for them to identify other unlimited liability
25 company investments that this group of noteholders have been

1 involved with.

2 THE COURT: All right. Now, pause, please, Mr.
3 Fisher. The way I heard that, that seems to be either exactly
4 the same or pretty much the same as what you were asking for in
5 your letter. Am I correct in that understanding?

6 MR. FISHER: Yes, Your Honor.

7 THE COURT: Okay. All right.

8 MR. FISHER: And, Your Honor, the fourth issue in our
9 letter relates to documents that support the 2019 statements
10 that have been filed by Greenberg with respect to the
11 noteholder group. And having thought about it further and
12 having read Greenberg's letter, we have no reason to doubt the
13 integrity of those filings. And for that reason, I don't think
14 that there's discovery that we need with respect to the backup
15 to the 2019 statements. And since submitting the letter, I
16 think we've decided to back off of that particular request,
17 which is why I said at the outset that I only have two and a
18 half issues to present to Your Honor.

19 THE COURT: Okay. Anything else, Mr. Fisher?

20 MR. FISHER: Unless the Court has questions about the
21 letter.

22 THE COURT: No, you took care of them as we went
23 along.

24 Mr. Zirinsky?

25 MR. ZIRINSKY: Yes, Your Honor. Your Honor, I'd like

1 to introduce my partner, Kevin Finger, who has been handling
2 the discovery on behalf of the noteholders.

3 THE COURT: Okay.

4 MR. ZIRINSKY: And he will respond and argue whatever
5 points need to be argued and to answer any of Your Honor's
6 questions.

7 THE COURT: Okay. Mr. Finger?

8 MR. FINGER: Good morning, Your Honor. It is Kevin
9 Finger. It's my pleasure to appear before this Court for the
10 first time.

11 With respect to the discovery that's been ongoing,
12 with respect to the objection, as the Court is aware, the
13 discovery rules dictate that the discovery must be relevant to
14 the issues presented in the litigation. In this case, in this
15 contested matter, it's the committee's objection to the
16 noteholders' claims. And in that objection, the committee
17 describes the basis for its objection as related to the
18 circumstances surrounding a lockup agreement.

19 And they claim -- the committee claims that the
20 noteholders have acted inequitably with respect to that lockup
21 agreement. And I think, and a fair inference is, that the
22 committee is alleging either some sort of coercion by the
23 noteholders with respect to the negotiations with Old GM and
24 their counsel, Weil Gotshal, or some sort of collusion with
25 them; and that that somehow renders this apparently arm's-

1 length negotiated transaction somehow unfair.

2 And as we've said in our letter, clearly this was a
3 hard-fought negotiation conducted by very sophisticated parties
4 with incredibly competent counsel. And the result was the
5 lockup agreement and ultimately the bankruptcy petition filed
6 by Old GM. And the discovery issues that we're discussing
7 today, Your Honor, are completely unrelated to the fundamental
8 premise of the objection, the lockup agreement.

9 And I should point out that the letter lists on page 3
10 and going on to page 4, a number of significant substantive
11 areas for which the noteholders agreed to produce all relevant
12 documents, including the lockup agreement, the litigation that
13 was commenced in Nova Scotia in 2009, documents relating to
14 those transfers, and a variety of other topics that ultimately
15 led up to the negotiations of the lockup agreement and the
16 filing of a bankruptcy petition by Old GM.

17 So when Mr. Fisher asks for information going back
18 before 2009, that's at odds with the allegations in the
19 objection. Paragraph 26 says quite clearly, "During 2009, the
20 lockup noteholders became concerned about collecting the
21 principal amount of the notes upon maturity." That's
22 absolutely accurate. And that is basically the premise of the
23 objection and that's what caused us to expand the time frame,
24 not just beyond May of 2009, but going all the way back through
25 January 1st, all the way through July 31st, to pick up anything

1 that may have transpired in that time frame that ultimately led
2 to the lockup agreement.

3 That would be, the noteholders have agreed to produce
4 thousands and thousands of pages of information from this time
5 frame that's related to all those subject matters listed on
6 page 3 and 4 of the noteholders' letter.

7 THE COURT: Keep going.

8 MR. FINGER: There's nothing about the purchase
9 decision to buy those bonds that informs the negotiations about
10 the lockup agreement. And the committee can't point to
11 anything that's presented in the objection that renders it so
12 other than just some sort of interest in that information. But
13 there's nothing tied to the objection as required by the
14 discovery rules.

15 The time frame after July 31, 2009, again, we view,
16 June 25th, really is the -- June 25, 2009, is really the last
17 act with respect to the lockup agreement, but expanded it
18 beyond June to be overly broad, in fact. Nothing really in the
19 objection -- there's a heading called "post-petition
20 implementation of the lockup agreement". They talk about the
21 June 25th date, and they don't know there's an agreement by
22 that date. Even the assumption by New GM of the lockup
23 agreement is in July of 2009. And the only reference to
24 something after that time period is, in fact, the filing of the
25 claims in this particular case.

1 So there's no real basis here to contest the
2 fundamental issue, which is the committee claims that a lockup
3 agreement is unfair, and somehow the noteholders acted
4 inequitably and somehow old GM was not fairly represented by
5 counsel and didn't negotiate properly. Nothing after the July
6 31, 2009 time frame informs any of that issue in this case.
7 And the noteholders submit that they've agreed to produce, in
8 an overbroad way, as much information as possible to permit the
9 committee to pursue its objection and contest the claims if
10 there's any grounds to do so.

11 Going beyond that time frame would impose a
12 significant burden on the noteholders. There's a lot of
13 information. These -- particular financial institutions watch
14 this industry, watch GM. Going back to collect all its
15 information and sift the chaff from the wheat is a time-
16 consuming, costly and burdensome exercise that frankly, without
17 any relation to the objection, is unfair to the noteholders to
18 have to go through this.

19 And again, as cited in the letter, nothing about what
20 the committee has claimed, really informs their objection.
21 Unless the Court has questions on that particular issue here of
22 the time frame, I can move to the noteholders' decision to
23 purchase.

24 THE COURT: Go ahead.

25 MR. FINGER: Your Honor, nothing about their decision

1 to purchase, again, informs the objection. It's -- there's no
2 allegation in the objection that says the noteholders knew
3 something or knew something special that wasn't otherwise
4 available to anyone in the market about this particular issue.
5 The noteholders' specific rationale for purchasing is going to
6 be different for each one. It's going to be highly
7 proprietary. It goes to the heart of any financial
8 institution's decisions to invest.

9 To the extent that the committee claims that the
10 profit and loss information somehow informs that, as Mr. Fisher
11 has said, that's already available to them. That's presented
12 with publicly available information as well as the information
13 present in Greenberg Traurig's 2019. So nothing about profit
14 and loss informs that issue.

15 And again, the fundamental issue here is, the
16 noteholders have publicly defined rights as provided by the
17 offerings circular set forth in their memo which has been
18 produced. And whatever rights either party has are clearly set
19 forth in documents. And what the noteholders' subjective
20 belief about those rights vis-a-vis what GM Canada or GM Nova
21 Scotia's subjective belief about those rights is, is
22 irrelevant.

23 Further, Mr. Fisher, in this call as well as in his
24 letter, said that he's trying to get to the bottom of or get to
25 the merits of the litigation in Nova Scotia, and frankly cites

1 Canadian law on various issues regarding that. And
2 notwithstanding our disagreement as to what the Canadian law
3 actually holds, asking this Court to retry or to relitigate the
4 Nova Scotia litigation, simply has no place here. The
5 litigation was filed. The information that was discussed or
6 contemplated in the first half of 2009 about that litigation
7 will be provided to the committee. But trying to relitigate
8 that case is, I think, beyond the bounds of what this Court has
9 been asked to do with respect to the objection.

10 What the noteholders' belief about what those rights
11 were that ultimately led them to file that proceeding, is not
12 relevant to the proceeding, which is clearly set forth in the
13 pleadings that were filed and the motions that were filed and
14 contested by both sides.

15 Again, the fair inference of the objection is that
16 there's some sort of coercion or collusion with respect to the
17 lockup agreement. None of that is informed by whatever the
18 noteholders believed at the time that they purchased the notes.

19 THE COURT: All right.

20 MR. FINGER: If the Court has no further questions on
21 that, I can move to the ULC investment issue.

22 THE COURT: Go ahead.

23 MR. FINGER: Similarly, there's nothing about the
24 decision to purchase -- to make investments in other vehicles
25 that relates to the decision -- to the issues related to the

1 lockup agreement. So it's even one step further removed.
2 We're not even talking about a decision to invest in the GM
3 Nova Scotia notes, we're talking about some other vehicle which
4 is -- in Mr. Fisher's letter, it's clearly -- he has an idea of
5 what those are, because he identifies docket entries. But to
6 go back and ask the noteholders to review prior investments
7 that may involve ULCs for the purpose of this, has no rational
8 connection to this objection. This is simply another burden
9 that the noteholders shouldn't have to bear in his case.

10 THE COURT: All right. Anything further, Mr. Finger?

11 MR. FINGER: No, Your Honor.

12 THE COURT: All right. Mr. Fisher, do you want to
13 reply?

14 MR. FISHER: Yes. Just briefly, Your Honor. If --
15 Mr. Finger referred to the page 3 of the noteholders' letter to
16 the Court. And I indicated that there are a whole bunch of
17 bullet point categories where the noteholders have agreed to
18 produce documents. What I think is -- we're not quite complete
19 about that presentation, is that with respect to many of those
20 topics, the relevant time frame is before the time frame being
21 proposed by the noteholders and goes later than the time frame
22 being proposed by the noteholders.

23 And so if -- it's not quite right to say that they've
24 agreed to provide us with all relevant documents about these
25 topics. There are very significant exclusions that are built

1 into their position. And just by the way of example, the
2 second bullet point refers to all documents concerning the
3 litigation commenced in Nova Scotia against Old GM and certain
4 subsidiaries. Well, that litigation was commenced in March
5 2009, but it concerned events that happened in 2008.

6 All documents concerning any transfers referred to in
7 the Nova Scotia proceeding. Those are 2000 -- those are May
8 2008 transfers that we're talking about. So I'm certainly
9 going to be deprived of relevant information if I'm not getting
10 information before January 2009.

11 All documents concerning currency swaps between Nova
12 Scotia Finance and Old GM. Well, the swaps weren't assumed
13 until August 2009, which is after the time frame that's
14 proposed by the noteholders. And as I indicated, well into
15 2010 there is discussion whether those swaps are being properly
16 calculated for purposes of the claim in this case.

17 All documents concerning intercompany loans from Nova
18 Scotia Finance to GM Canada. That's not a 2009 event. That's
19 a 2008 and earlier event. All documents concerning a potential
20 reorganization or bankruptcy insolvency liquidation or winding
21 up event of Nova Scotia Finance or GM Canada. That didn't
22 happen, Your Honor, until October 2009.

23 So there's a list of categories, and the noteholders
24 are telling the Court that they've agreed to give up all
25 documents concerning those categories. But that sort of evades

1 the fundamental issue, which is, what's the relevant period of
2 time in order for the committee to be sure that it's getting
3 the relevant documents concerning those topics. So that's why
4 I think the time frame is such a critical issue here.

5 Issue number two, which is the noteholders' decision
6 to purchase notes. All we're trying to see is whether
7 discovery bears out our theories of the case. But if it
8 doesn't then we're not going to be able to press those
9 theories. But based on what we know about what happened here,
10 when the noteholders purchased these notes in 2008, they knew
11 about the intercompany transfers that they then later, in March
12 2009, challenged in litigation commenced in Nova Scotia.

13 So essentially, when they purchased their notes, they
14 were buying an oppression claim against Nova Scotia that they
15 were then going to use for maximum leverage to try to get as
16 much as they could on these notes. And so, you know, I
17 don't -- the committee does not believe that this is a campaign
18 that started sometime in 2009. This is a deliberate investment
19 strategy that started in 2008 when they purchased the notes and
20 thought through how they could take advantage of the ULC
21 structure and projected distress for GM and its Canadian
22 subsidiaries.

23 With respect to the list of the ULC investments,
24 again, I think how they are able to gain the ULC structure in
25 order to maximize their return on investment is a relevant part

1 of the puzzle. But I'm mindful of the burden, and therefore
2 we've restricted it to a list.

3 And on the topic of burden, Your Honor, in the
4 noteholders' letter, they talked about -- they quote Rule
5 26(b)(2)(B). And this to suggest that this information is not
6 reasonably accessible to them. And that's just not true. Not
7 reasonably accessible is, of course, a term of art, and it
8 refers to electronic data that is not searchable, that exists
9 in backup servers that are difficult to access. I have every
10 reason to believe, and I have not been told to the contrary,
11 this is all live electronic data that can be collected,
12 searched and produced.

13 So I do appreciate that it's more data that needs to
14 be collected, searched and produced. But I don't think it's
15 fair to say that it's an unreasonable burden. We tried to
16 restrict the time frame to that time frame that we think is
17 necessary to give us information that is going to lead to
18 admissible evidence in the ultimate hearing on this objection,
19 Your Honor.

20 THE COURT: All right. Gentlemen, everybody sit in
21 place. There's going to be a few moments of silence, of dead
22 air. So don't be surprised or upset if don't hear anything for
23 a couple of minutes.

24 (Pause)

25 THE COURT: All right, gentlemen. On the remaining

1 issues before me, the documents will be produced for the period
2 from June 1, 2008 through the end of 2010. The documents in
3 the second category will be produced to the extent they deal
4 with the decision to purchase, but the request is denied
5 without prejudice with respect to documents that solely relate
6 to sell or hold decisions. It being understood, of course,
7 that if a document refers to both, or some combination of those
8 three things, it still has to be produced. And the request
9 that a list be provided with respect to investments in other
10 ULCs is granted. My bases for the exercise of my discretion
11 follow.

12 First, in my view, after hearing argument from both
13 sides, it's no big deal to add a few months on each end to the
14 requested time coverage of the discovery request. There has
15 been no real showing of burden other than the ipse dixit claim
16 that adding these few months of discovery on each end is
17 significant.

18 The requested expansion of the time coverage for the
19 request does not require production of documents of a different
20 character. And frankly, gentlemen, we're talking about a claim
21 which, at least by some people's count, is 2.67 billion
22 dollars -- perhaps I should say claim or aggregate claims. And
23 when you're trying to get that much money from an estate, to
24 which of course you may be fully entitled, but the incremental
25 cost of a little extra production and a few extra months,

1 cannot be considered unfair or oppressive in the context of the
2 extraordinary amounts of money for which recovery is sought.

3 Then, gentlemen, that while I express no view on the
4 merits of the case or even whether anything that the creditors'
5 committee wishes to obtain is ultimately going to be
6 admissible, everybody knows what the standard is for discovery
7 vis-a-vis it being reasonably calculated to lead to admissible
8 evidence or potentially admissible evidence. And I think that
9 the request easily passes muster on that standard.

10 At this stage in the case, I'm not going to let either
11 side's views as to the merits or what its views are concerning
12 what the legal issues are to be determinative of the scope of
13 discovery. Each side is going to be allowed to make its best
14 case based on evidence that may turn out to be relevant with
15 respect to issues as to the merits which have yet to be
16 decided.

17 The creditors' committee has made a number of claims
18 or contentions vis-a-vis the Nova Scotia noteholders,
19 including, without attempting to characterize either side's
20 positions inappropriately or to bind either side to the
21 contentions, that the Nova Scotia noteholders had created a
22 cottage industry to get increased distributions, and to confer
23 an advantage over other creditors. They've used the expression
24 "to buy oppression claims". And they've made accusations of
25 gaming the system.

1 I don't know if those allegations are true or not. I
2 don't know if even if those allegations are true, there's
3 necessarily anything wrong with it, or if there is something
4 wrong with it, if whatever's wrong with it is legally
5 actionable or legally cognizable as a basis for relief. But
6 we're going to get to the facts. We're going to get the facts.
7 And I won't decide the ultimate issues in this case in a
8 factual vacuum.

9 It is for that reason -- or those reasons -- that I
10 think the requests in both category number 2 and number 3 are
11 appropriate, subject to the limitations that I articulated
12 before. While I think that those limitations' rationale is
13 obvious, I think I can and should clarify why I think the
14 purchase decisions are relevant, but that decisions as to sell
15 and hold should be denied without prejudice at this time.

16 The various contentions that the creditors' committee
17 made, make buy decision, purchase decisions, plainly relevant.
18 But at least on this state of the record, the amount of money
19 that various Nova Scotia noteholders might be making off this
20 investment, is not now relevant, if it ever will be. The issue
21 isn't so much how much money they're going to make off this. I
22 think it may be argued or inferred that they wouldn't have made
23 the investment unless they wanted to make a profit. But the
24 issue isn't so much -- at least on this state of the record --
25 exactly how much of a profit they're going to make, it's much

1 more the underlying rationale and the effect on the creditor
2 community and the various other allegations which provide the
3 basis underlying this controversy.

4 Lastly, gentlemen, for the avoidance of doubt,
5 anything produced will be at least initially subject to
6 coverage under a confidentiality order. And to deal with an
7 issue which probably didn't need stating, but I will, only
8 documents that actually exist or are known need to be produced.

9 All right, gentlemen, not by way of reargument, are
10 there any open issues?

11 MR. ZIRINSKY: Your Honor, it's Bruce Zirinsky.

12 THE COURT: I'm sorry, I couldn't hear that.

13 MR. ZIRINSKY: I'm sorry, Your Honor. It's Bruce
14 Zirinsky. I have a frog in my throat. I was just clearing it.

15 I don't think it's relevant to today's discussion, but
16 I did want to inform the Court and Mr. Fisher that we were
17 informed this week that two of the noteholders we represent
18 have sold their claims and are no longer creditors of GM. It's
19 our intention to file an amended 2019 statement as soon as we
20 can obtain the relevant information. And we'll attempt to file
21 it by next week.

22 THE COURT: Very well. Anything else, anybody?

23 MR. FISHER: Your Honor, this is something I'll take
24 up with Mr. Zirinsky, certainly. But I just want to ensure
25 that Your Honor's discovery rulings would apply to discovery of

1 information in the files of those two noteholders that seem to
2 have withdrawn from Mr. Zirinsky's group.

3 MR. ZIRINSKY: Well --

4 THE COURT: Well, the issue, at least warrants an
5 opportunity for Mr. Zirinsky or Mr. Finger to be heard before
6 I express a view on that.

7 MR. ZIRINSKY: Understood, Your Honor. Your Honor, I
8 would suggest that we have a conversation with Mr. Fisher and
9 attempt to work things out. And if we can't, we'll come back
10 to Your Honor on that.

11 It is our clients' understanding that they are still
12 going to have to produce discovery. Whether that's in the
13 capacity, now, as a party or as a third-party witness, it may
14 be a distinction without a difference. But they do understand
15 that they will be required to produce discovery.

16 THE COURT: Well, I think you may be right, Mr.
17 Finger. And that's my tentative. But I like the idea of you
18 having a dialogue with Mr. Fisher on that. And if you later
19 somehow can't come to an agreement, you can call me up again.

20 MR. ZIRINSKY: Thank you, Your Honor. It's Bruce
21 Zirinsky, by the way, that made that comment.

22 THE COURT: I'm sorry. That's fine.

23 MR. ZIRINSKY: That's okay. Thank you, Your Honor.
24 We appreciate your time.

25 THE COURT: All right, gentlemen. Have a good

1 weekend. We're adjourned.

2 MR. ZIRINSKY: Thank you, Your Honor. We appreciate
3 it.

4 (Whereupon these proceedings were concluded at 9:28 AM)

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I N D E X

RULINGS

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Documents will be produced for period of	23	1
6/1/08 to 12/31/10		
Documents in category 2 will be produced	23	2
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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a
true and accurate record of the proceedings.

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

Veritext

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Date: April 18, 2011